

**VILLAGE OF PINEHURST ZONING BOARD OF ADJUSTMENT
FINDINGS OF FACT
DOCKET # 02-18**

Variance Request for 67 Deerwood Ln./PID #00035903

This request is to encroach into the thirty (30) foot Lakefront/Golf Course setback to allow for the construction of an outdoor fireplace and patio.

The Zoning Board of Adjustment shall not grant a variance unless and until it makes the following findings:

The Findings of Facts and Conclusions of Law are to be based on the Official Record in the proceeding that is made up of the official transcripts and any documentary evidence submitted within the course of the proceeding.

Such Findings of Fact are to be based upon substantial, competent, and material evidence as found in the record of the proceeding.

- 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

The applicant submitted evidence that indicated that there would be no reasonable use of the rear property to construct an accessory structure if the required setback is met.

- 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

The applicant submitted evidence that rear yard of the property has unique topography and location to the golf course property. Therefore, the outside condition is not common to most and the construction into the required setback would not greatly impact the golf course as it is outside the playable area and is steep, wooded and near a wet area.

- 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship**

The applicant submitted evidence that the hardship is not self-created.

- 4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice achieved.**

The applicant submitted evidence if the variance is granted it would be consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved as this request for construction is well beyond the playable area of the golf course.

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be **GRANTED** subject to the following conditions:

Granted w/ conditions;

The fireplace cannot be constructed in the required setback and the proposed patio can be built up to twenty (20) feet from the rear property line.

I, Lauren Craig, Village Clerk a Notary Public for said Moore County and North Carolina do hereby certify that A.C. Engelfried, Chairperson of the Board of Adjustment, Village of Pinehurst, personally appeared before me this day and acknowledged the foregoing document. Witness my hand and official seal this the ____ day of _____.

Lauren Craig, Village Clerk
Notary Public
My Commission expires: _____

SEAL

Julia Latham, Vice-Chairperson

Gwendy Hutchinson, Secretary

**VILLAGE OF PINEHURST ZONING BOARD OF ADJUSTMENT
FINDINGS OF FACT
DOCKET # 03-18**

Variance Request for 4 Peachtree Ln./PID #00032345

This request is to encroach fifteen (15) feet on the side into the thirty (30) foot Lakefront/Golf Course setback to allow for the construction of a single family residence.

The Zoning Board of Adjustment shall not grant a variance unless and until it makes the following findings:

The Findings of Facts and Conclusions of Law are to be based on the Official Record in the proceeding that is made up of the official transcripts and any documentary evidence submitted within the course of the proceeding.

Such Findings of Fact are to be based upon substantial, competent, and material evidence as found in the record of the proceeding.

- 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.**

The applicant submitted evidence that indicated that strict application of the ordinance would require a thirty foot setback on the side and rear therefore significantly reducing the allowable building envelope.

- 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

The applicant submitted evidence that the property has a unique location to the golf course property. The lot is a corner lot and the adjacent golf course property is not used by the golf course and acts as a natural buffer resulting in undefined land.

- 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship**

The applicant submitted evidence that the hardship is not self-created.

- 4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice achieved.**

The applicant submitted evidence if the variance is granted it would be consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice. This request would allow for construction that is more harmonious with the surrounding homes.

Therefore, on the basis of all the foregoing, it is ordered that the application for a variance be **GRANTED** subject to the following conditions:

Granted w/ conditions:

None.

I, Lauren Craig, Village Clerk a Notary Public for said Moore County and North Carolina do hereby certify that A.C. Engelfried, Chairperson of the Board of Adjustment, Village of Pinehurst, personally appeared before me this day and acknowledged the foregoing document. Witness my hand and official seal this the ____ day of _____.

Lauren Craig, Village Clerk
Notary Public
My Commission expires: _____

SEAL

Julia Latham, Vice-Chairperson

Gwendy Hutchinson, Secretary

BOARD OF ADJUSTMENT MEETING

Public Hearing Number II

in re: Variance request

HELD ON:

June 7, 2018

5:30 p.m.

HELD AT:

Assembly Hall

395 Magnolia Road

Pinehurst, North Carolina

Chairman:

Fred Engelfried

Vice-Chairperson:

Julia Latham

Members:

Leo Santowasso

David Kelley

Mike Marsh

1 VICE-CHAIR LATHAM: I am going to call us back
2 to order after our recess. Before we move into Public
3 Hearing Number II on the Peachtree Lane property. I am
4 going to ask if any member must recuse himself due to
5 ex parte communication, conflict of interest, financial
6 interest in the outcome or because they've already made
7 up their minds?

8 Do I hear a motion to recess from our regular
9 meeting and enter Public Hearing Number II?

10 MR. KELLEY: So moved.

11 MR. SANTOWASSO: Second.

12 VICE-CHAIR LATHAM: Voice vote, all those in
13 favor?

14 (All respond Aye.)

15 VICE-CHAIR LATHAM: Very good, we have now
16 entered into our Public Hearing Number II. We ask that
17 all come forward who wish to testify or enter evidence
18 who have not already been duly sworn in, to please
19 approach the reporter and be so sworn.

20 (Whereupon, Mike Tatum

21 was sworn to tell the truth)

22 VICE-CHAIR LATHAM: As a reminder, the Board
23 of Adjustment's decision will be based on competent,
24 material and substantial evidence that's been entered
25 into the record. At this time I'd like Alex to read

1 the notice into the record and provide any relevant
2 background.

3 MR. CAMERON: Thank you. The purpose of this
4 public hearing is to receive testimony for a variance
5 request from section 9.2A, table of dimensional
6 requirements for the property at 4 Peachtree Lane
7 further identified by Moore County parcel ID number
8 00032345. This property is located within the R10 high
9 density residential zoning district. And specifically,
10 the applicant and owner, Mike Tatum is requesting a
11 variance from the 30-foot lake front/golf course
12 setback from the property line to a 15-foot side
13 setback to allow for construction of a new single
14 family home.

15 Once again, our office receive application
16 for a new single family home to be developed and it
17 showed a violation of that 30-foot golf course setback,
18 and so the applicants are here requesting a variance
19 from that and to apply the normal 15-foot side setback
20 that is carried with that R10 zoning designation
21 granting relief from the 30-foot golf course setback.

22 VICE-CHAIR LATHAM: Would the applicant like
23 to approach and present (inaudible)

24 MR. SCARBOROUGH: My name is Talmage
25 Scarborough. I'm an attorney representing Mike Tatum.

1 I would like to ask your indulgence please to sort of
2 take this out of order. Bob Farren is one of our
3 witnesses and he's got a meeting to get to, so could I
4 ask him to come up and just address -- what I'd like
5 him to do is address the issue of -- this is a very
6 similar -- not very similar, but somewhat similar case
7 as the last one. And this lot, and I don't know if
8 Alex has done this, but we are not -- I don't quite
9 have a professional presentation that the last person
10 had, but we have some aerials and GIS things that got
11 submitted with the packet we'd like for you to review
12 and enter that into evidence.

13 But I would like Bob to come up and talk to
14 the issue of, this lot is an end lot that -- what is
15 trying to happen is they're trying to make a 30-foot
16 setback -- well, interpreted that the 30-foot setback
17 is applicable both the rear and side because the side
18 that we want the variance on is near but pretty far
19 away from the tee, the next tee, and Bob is the golf
20 course guy. I want him to come up and basically state
21 whether -- come on up here.

22 MR. FARREN: I have been to the site three
23 times, and each time just to confirm to whoever I may
24 have been talking to, that we, Pinehurst, LLC has no
25 issue with it. I have written a letter to that effect.

1 It is a situation I won't say completely
2 unique. There's a number of them as you mentioned
3 earlier situations, but this one happens to be kind of
4 a double whammy for this particular lot since it has a
5 front or back -- actually back and golf front, as well
6 as the side, if you apply that to the property lines.
7 And this case particularly, it would just simply be
8 closer to that tee, but is still an adequate, more than
9 adequate distance from the tee.

10 I will go on further to say on the record, I
11 agree and feel that it is a case by case basis, which
12 the vast majority of the setbacks are appropriate, but
13 there are some that should be a case by case basis.
14 And I'll go one step further in saying that any
15 exceptions or proposals for variances, we should be
16 able to visit -- the owner's representative of
17 Pinehurst, and a staff member to visit on site, and
18 sign off on it, and present it to this commission
19 without me having to be here to sit through the painful
20 sessions of this commission. That was beyond anything
21 I could have tolerated, so thank you.

22 MR. SANTOWASSO: I have a question of Mr. --

23 MR. SCARBOROUGH: May I ask him one question.
24 Go ahead, I don't want to --

25 MR. SANTOWASSO: There is evidence of some

1 runoff issues coming off of the golf course that impact
2 this lot. Will the golf course work with the owner to
3 try and divert some of that runoff?

4 MR. FARREN: No, we would not be in a
5 situation to address any of the runoff, because as soon
6 as we move it, then we've caused the issue for someone
7 else. If he want -- he will have to deal with the
8 water. We are not changing the water pattern. The
9 setback that I looked at are perhaps (inaudible) that
10 would be in place would affect that runoff. There is
11 still a great deal of water coming off the golf course.
12 It would be up to him, the homeowner, once it reaches
13 his property as we did on all the other properties, for
14 him to have ownership of the water, clean water
15 deposited on the other side of his property. We would
16 not be involved in any of the water storm drainage
17 issues.

18 MR. SANTOWASSO: Thank you.

19 MR. FARREN: Good question. Thank you for
20 clarifying.

21 MR. SCARBOROUGH: May I ask Bob one question.
22 In your opinion where the actual golf course is used
23 and where the tee box is on the side, in your
24 familiarity from visiting and seeing the layout, about
25 how far is it from the current side lot line to any

1 portion that is used as the golf course currently?

2 MR. FARREN: Without physically stepping off
3 the measurements, at least 50 feet. That is on a
4 championship tee that's seldom used. There's no cart
5 access up that way or anything else. So there's at
6 least 50 feet from the edge of that tee, I would say.

7 MR. SCARBOROUGH: Do any of the other members
8 have any other question of Bob, because I know he needs
9 to ...

10 VICE-CHAIR LATHAM: Thank you very much.

11 MR. FARREN: Thank you.

12 MR. SCARBOROUGH: Again, my name is Talmage
13 Scarborough. I'm essentially a real estate attorney.
14 Been practicing for 42 years. This is a particular
15 unique case because this is an end lot, as I might call
16 it, where the -- I don't know if you are allowed to go
17 out and look at these areas before or not. It used to
18 be -- I was on the Planning Board, and we could do
19 that, but I think the rules have changed since I was on
20 the Planning Board. This lot, because it is at the end
21 and there's a tee on one side and the green on the
22 other, is that they, under the zoning ordinance they're
23 saying that it has to be two 30-foot setbacks, both in
24 the rear and on the side.

25 That is really a hardship for any lot to have

1 the two setbacks, when as noted by Bob Farren, the golf
2 course itself is really 50 feet from that side line.
3 So the spirit and intent of the ordinance is being
4 upheld because I think we all kind of recognize that
5 when the PDO refers to golf course or lakes, we
6 physically want to know where that is, and of course,
7 as Alex read the definition of golf course. And
8 basically you can see from the aerials and from what
9 Bob Farren said, that the almost 50 feet has nothing do
10 with the golf course on that side of the lot. And it
11 would be appropriate to grant the 15 -- to grant the
12 variance so that it would be treated basically as a
13 normal lot at least on that side, because the golf
14 course really does not impact that side at all.

15 Also it should be borne in mind that keeping
16 the 15-foot setback -- or 30-foot setback, it shrinks
17 the building on the lot. And what that would mean, if
18 no variance is granted that the structure that could be
19 built would be probably substantially less than the one
20 that he has -- that Mike Tatum has submitted to be
21 built. I will let him address that in terms of how it
22 could impact that.

23 But that we believe actually would affect the
24 character of the neighborhood because the neighborhood
25 that's there, if you shrunk the lot -- if the building

1 envelop with the two 30-foot setbacks has to be used,
2 the type of structure that gets built will be not in
3 keeping with that community as it presently exists and
4 the other homes, because the size would have to be
5 reduced. Mike if you would?

6 Just please explain what the impact on having
7 to -- the size of the structure that you would have to
8 --

9 MR. TATUM: Like Mr. Scarborough mentioned,
10 we had to go with a two-story home and eliminate -- it
11 wouldn't be in keeping, like he said, with the street,
12 nice homes along that area. And we would have to -- we
13 would lose about 400 square feet by -- with the
14 additional -- with the 30-foot setback, which would
15 make it difficult to meet the criteria for the R10 on
16 the first floor.

17 With that being said, of course we could go
18 up and -- but it wouldn't be in keeping with the
19 neighborhood, you know. I am trying to keep the
20 neighbors happy, Pinehurst happy, and the golf course.
21 Of course golfers, you know, (inaudible)

22 VICE-CHAIR LATHAM: Any questions at this
23 time.

24 MR. MARSH: Is this a spec house or is it
25 design built?

1 MR. TATUM: It is a spec house.

2 MR. MARSH: Were you aware of the setbacks
3 when you purchased the lot?

4 MR. TATUM: I was not.

5 VICE-CHAIR LATHAM: Any additional questions?

6 MR. SANTOWASSO: This was an existing lot of
7 record, correct, originally platted with all of the
8 rest of the subdivision? Anybody?

9 MR. TATUM: I'm sorry?

10 MR. SANTOWASSO: Anybody can answer the
11 question or your attorney.

12 MR. TATUM: Was it what? I am sorry.

13 MR. SCARBOROUGH: Yes, it is. It is an
14 existing lot of record. It has not been changed in any
15 way from the way that Pinehurst developed -- recorded
16 the original plat.

17 MR. SANTOWASSO: You heard me talk to Mr.
18 Farren about drainage issues. You're acquainted with
19 them and willing to take it on and do whatever is
20 necessary?

21 MR. TATUM: There is more of a drainage issue
22 on the golf course property. The lot that I have of
23 course is sloped from rear to the front, but I'll do
24 what I have to do, like I always do, you know, building
25 in Pinehurst.

1 VICE-CHAIR LATHAM: Any additional questions
2 for this applicant?

3 Alex, do you have any addition comments on
4 behalf of the Village?

5 MR. CAMERON: I think this is another one
6 that is pretty straight forward. To add to, I think it
7 was a question Mr. Scarborough asked; at the time of
8 the submittal, I don't think that Mr. Tatum was aware
9 that the Village would determine that to be a golf
10 course setback on that side as well. Once we got that
11 submitted, then we had to act on it based on our
12 interpretation.

13 VICE-CHAIR LATHAM: I believe there is a
14 member of the audience who wanted to --

15 MS. WEBBER: I'm Carol --

16 VICE-CHAIR LATHAM: Can you come to the
17 microphone please.

18 MS. WEBBER: I'm Carolyn Webber and I live at
19 the number six, right next to that lot. I need more
20 information. I need to know how it impacts my view.
21 I've live there since -- my family has been there since
22 1999. We have a beautiful view of the course, at about
23 the 5th tee, and you know, I can't tell you how many
24 dinners and parties and things that we've done and
25 looked at the golf course, how many cups of coffee I

1 had on my deck in the morning. I lost both of my
2 parents last year and it is very hard for me to think
3 that you're going to change that property so I cannot
4 have that view anymore. I don't know, you haven't
5 presented anything to me so I understand, but the
6 impact on my house --

7 UNKNOWN: Well if you're at six, then your
8 view is of the golf course --

9 MS. WEBBER: Yes, it is of the golf course.

10 MR. SCARBOROUGH: What we're asking for is 15
11 feet on the other side.

12 MS. WEBBER: On the other side, so when I
13 look out --

14 MR. TATUM: It won't affect you. I am not
15 trying to encroach in the rear. I am trying to get a
16 variance on the 15 feet on the right side, not on the
17 left side.

18 MS. WEBBER: Right. I haven't seen any
19 evidence of that. It's very hard for me to understand
20 what is going to happen, because I went out and walked
21 the property the other day, and I saw the stakes, you
22 know, and it looked like, from what I could see, that I
23 will see that house when I look out.

24 MR. SCARBOROUGH: Absolutely.

25 MS. WEBBER: And right now I don't see any --

1 I look across the golf course, but I don't see my
2 neighbor at number eight, I don't see him when I am out
3 on the patio and I'm enjoying my coffee in the morning.
4 But I will see that house, and I'll --

5 MR. SCARBOROUGH: You will see the house
6 there.

7 MS. WEBBER: Yeah, I will see it. That will
8 change my view.

9 MR. SCARBOROUGH: There will be a house there
10 (inaudible)

11 MS. WEBBER: Yeah. That is what I thought by
12 looking at those stakes.

13 MR. SCARBOROUGH: Yeah, but it will not be
14 encroaching you at your back or to your side, other
15 than the house sitting there in the normal setback that
16 is required off the rear.

17 MS. WEBBER: You know, I mean, it is -- 15
18 feet is a lot.

19 MR. SCARBOROUGH: That's right. What we are
20 asking for is a variance on the right side of the
21 house, not the rear. It won't obstruct any view for
22 you on the rear.

23 MS. WEBBER: You know, until I get something
24 that I can see and look at, so I can understand it.
25 Because I really don't understand it.

1 MR. CAMERON: I believe that is part of the
2 pack. It's part of your package, the site line of the
3 location.

4 MR. SCARBOROUGH: And it also shows if we had
5 to go by the 30 feet, it also has a line on that site
6 plan.

7 VICE-CHAIR LATHAM: I think she needs to see
8 this as well to see where her house is in relation...

9 MR. SCARBOROUGH: Here you go.

10 MR. TATUM: Any house built with any setback
11 there is going to affect her view from her house.

12 VICE-CHAIR LATHAM: You can correct me if I
13 am wrong, Mr. Tatum, you're the builder, but if you do
14 not have that 30 foot -- if you don't have the 15 and
15 you're forced to deal with the 30 foot, then you have
16 to go up.

17 MR. TATUM: Yes, ma'am.

18 VICE-CHAIR LATHAM: That is going to create a
19 more significant --

20 MR. SCARBOROUGH: Hardship on her.

21 VICE-CHAIR LATHAM: -- view issue for the
22 neighbor.

23 MR. TATUM: Yes, ma'am. I had the house
24 designed to fit on that lot not knowing that I had to
25 deal with a 30-foot side setback. So I think I sent

1 you guys a survey showing the right side with a 15 foot
2 as well as a 30 foot, so you can see how much would
3 have to be taken out of the house, and re-designed. I
4 couldn't put that house, which -- but it would not --
5 the house was designed to fit with the 15 foot. We
6 would have to redesign the home and got to go up to
7 meet our building square footage.

8 VICE-CHAIR LATHAM: Thank you.

9 MS. WEBBER: When you bought the property
10 though, you were aware of that variance, right?

11 MR. TATUM: When I bought the property I was
12 not aware that I had to have a 30-foot side setback.

13 MS. WEBBER: So no matter what you do,
14 regardless if you go up, or what you do right there, I
15 will be impacted?

16 MR. TATUM: Yes, ma'am.

17 MS. WEBBER: I am sure of that. I thought
18 for sure I would be.

19 MR. TATUM: Any time if you're going to build
20 a house there. If you're trying to look at the view of
21 the tee, yes, ma'am, you will, unless you go --

22 MS. WEBBER: Which is I -- that's the view I
23 want, the view of the tee.

24 MR. TATUM: You want to see the tee.

25 MS. WEBBER: Yes.

1 MR. TATUM: Well, any structure would impede
2 your view. I'm sorry.

3 MS. WEBBER: Even if it's shifted to the very
4 -- it went to the variance, it went -- it did what you
5 were supposed do it, would impede that. So I guess my
6 question is, the setbacks of 15 to 30, how much
7 difference is it for me.

8 MR. TATUM: None whatsoever. A structure is
9 going to be beside you.

10 MS. WEBBER: I understand that. I understand
11 that. I just want to know if there's a difference
12 between 15 foot and the 30 foot is what I'm trying to
13 understand.

14 MR. TATUM: What I would have to do if I
15 don't get the variance, I'll have to go up and it will
16 be more of a larger structure. And I don't think it
17 will look nice from the street, or the golf course, or
18 you.

19 MS. WEBBER: You know, it's really hard for
20 me to visualize it, and how it's going to impact my
21 house.

22 MR. TATUM: Just basically it's just going to
23 be another home beside you.

24 MS. WEBBER: I have (inaudible) beside me, I
25 don't -- I see it when I go outside but I don't --.

1 VICE-CHAIR LATHAM: At this point, do you have
2 any other testimony you would like to give the Board?

3 MS. WEBBER: No, that's all. It's just that
4 it does impact me. I think it impacts the value of my
5 house.

6 VICE-CHAIR LATHAM: Thank you. Any
7 additional comments at this time?

8 I am going to advise everyone that the
9 hearing will be left open during the Board's initial
10 discussion in the event that there are additional
11 questions of the applicant or staff, but this hearing
12 will be closed before we vote.

13 Board, any additional questions for anyone
14 who entered evidenced with us today?

15 All right, do I hear a motion to close the
16 public hearing and re-enter our Board of Adjustment
17 meeting?

18 MR. KELLEY: So moved.

19 MR. SANTOWASSO: Second.

20 VICE-CHAIR LATHAM: Voice vote please. All
21 in favor?

22 (All respond Aye.)

23 VICE-CHAIR LATHAM: Our public hearing is
24 closed and we've entered our regular Board of
25 Adjustment meeting. We have before us a motion for a

1 variance asking for relief from the 30-foot side
2 setback, the golf 30-foot side setback to a 15-foot
3 side setback. Is there any discussion by the Board at
4 this time? We note as with our prior case, a variance
5 requires the four standards of review that we have
6 previously discussed. Any Board discussion?

7 Okay, at this time we have three options
8 before us; to approve the variance as written, to
9 approve the variance with conditions, or to continue
10 the meeting to another date for a determination.

11 At this time is there a motion before the
12 Board?

13 MR. KELLEY: I move that we approve the
14 variance as requested.

15 VICE-CHAIR LATHAM: Is there a second?

16 MR. SANTOWASSO: Second.

17 VICE-CHAIR LATHAM: Okay, the motion has been
18 moved and seconded to approve the variance as
19 requested. We'll do a roll-call vote. Leo?

20 MR. SANTOWASSO: Yes.

21 VICE-CHAIR LATHAM: David?

22 MR. KELLEY: Yes.

23 VICE-CHAIR LATHAM: Myself, yes. Fred?

24 MR. ENGELFRIED: Yes.

25 VICE-CHAIR LATHAM: Mike?

1 MR. MARSH: Yes.

2 VICE-CHAIR LATHAM: The motion has been
3 approved unanimously. The variance is approved without
4 any conditions.

5 MR. TATUM: Thank you very much.

6 MR. ENGELFRIED: Alex, a protocol question.
7 The package includes a provision for a signature by the
8 chair.

9 MR. CAMERON: (inaudible) started with that,
10 much like if you recall from earlier with the Findings
11 of Fact, when we get you in the office we can go ahead
12 and get the signature on both of those at the same
13 time, if you're okay with that.

14 MR. ENGELFRIED: I didn't know if you wanted
15 Julia to sign on that one.

16 MR. CAMERON: This one you will have your
17 signature on it.

18 VICE-CHAIR LATHAM: Okay, thank you. Turning
19 to our general business, is there any other discussion
20 by the Board?

21 No. Our next meeting date is a new matter is
22 brought before us. I see before me, Thursday, August
23 2nd. Are we not meeting in July?

24 MR. ENGELFRIED: That was the earlier
25 discussion we had, and at this point in time it appears

1 that there is nothing added for our docket although
2 there are people available for planning and zoning, so
3 if something does come up for the BOA, those five would
4 compose the BOA.

5 VICE-CHAIR LATHAM: Very good. Our next
6 meeting then is Thursday, August 2, 2018, 4:30 -- not
7 4:30, 5:30.

8 MR. SANTOWASSO: Time to be determined.

9 VICE-CHAIR LATHAM: Time to be determined.
10 Okay, do we have a motion to adjourn?

11 MR. SANTOWASSO: So moved.

12 MR. KELLEY: Second.

13 VICE-CHAIR LATHAM: All in favor?

14 (All response Aye.)

15 (Off the record.) 7:13 p.m.

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BOARD OF ADJUSTMENT MEETING

Public Hearing Number I

in re: Variance for Patio and Fireplace

HELD ON:

June 7, 2018

5:30 p.m.

HELD AT:

Assembly Hall

395 Magnolia Road

Pinehurst, North Carolina

Chairman:

Fred Engelfried

Vice-Chairperson:

Julia Latham

Members:

Leo Santowasso

David Kelley

Mike Marsh

1 CHAIRMAN ENGELFRIED: Welcome everyone to the
2 regular scheduled meeting of the Pinehurst Board of
3 Adjustment. It's June 7th, 5:30, notice properly
4 given. I'll notate that we have a quorum made up of
5 our permanent members from my left to right: Leo
6 Santowasso, David Kelley, Julia Latham, Michael Marsh
7 and me, I'm Fred Engelfried. And to the left of Julia
8 is John Silverstein who is attorney for the Board of
9 Adjustment and guides us through protocols as we need
10 reminders.

11 I will recognize at this time, Jules Latham
12 who is vice-chair and will conduct the public hearings
13 and the balance of the BOA meeting. Jules.

14 VICE-CHAIR LATHAM: Thank you, Fred. Thank
15 you. As a reminder, our proceeding today is being
16 videotaped. Speaking into the microphones is important
17 for all here today to make sure that we are recording
18 well. If anyone has trouble hearing us, please wave so
19 we can adjust our microphones accordingly.

20 First business is to approve the minutes of
21 May 3, 2018. These have been duly circulated. Has
22 everyone received those minutes? Any comments?

23 MR. SANTOWASSO: Move to approve.

24 MR. MARSH: Second.

25 VICE-CHAIR LATHAM: Voice vote. All in

1 favor?

2 (All response Aye.)

3 VICE-CHAIR LATHAM: Okay, the motion has
4 carried and the minutes of May 3rd, 2018 are approved.
5 Next we need to approve the May 3rd, 2018 Findings of
6 Fact for the variance at 38 Chinquapin Road. Do we
7 have a motion to approve?

8 MR. KELLEY: So moved.

9 MR. SANTOWASSO: Second.

10 VICE-CHAIR LATHAM: All in favor -- excuse
11 me. This is a roll call vote. So Leo, I assume since
12 ...

13 MR. SANTOWASSO: Yes.

14 MR. KELLEY: Yes.

15 VICE-CHAIR LATHAM: Yes.

16 MR. ENGELFRIED: Yes.

17 MR. MARSH: Yes.

18 VICE-CHAIR LATHAM: Okay, motion is carried.

19 MR. ENGELFRIED: May I add one note to that
20 please?

21 VICE-CHAIR LATHAM: Yep.

22 MR. ENGELFRIED: I have to sign the document,
23 but it has to be with the Village Clerk, so I'll do
24 that tomorrow.

25 VICE-CHAIR LATHAM: All right, as we move

1 into our first public hearing, before we go into
2 session, I wanted to ask any member -- ask if there are
3 any members who need to recuse themselves due to ex
4 parte communication, conflict of interest, financial
5 interest in the outcome or because they have already
6 made up their mind on this matter?

7 (Pause.)

8 VICE-CHAIR LATHAM: No one, very good. We
9 will then move forward. Do I hear a motion to recess
10 from our regular meeting and enter into the Public
11 Hearing Number One.

12 MR. ENGELFRIED: I'll make that motion.

13 MR. SANTOWASSO: Second.

14 VICE-CHAIR LATHAM: All in favor?

15 (All respond Aye.)

16 VICE-CHAIR LATHAM: Okay, we are now recessed
17 from our regular meeting and operating in public
18 hearing. First, we'd like to swear in all who will be
19 called or anticipate offering evidence today.

20 Attorneys, it's optional for attorneys to be sworn in
21 as they are officers of the court. Anyone who will be
22 speaking on behalf of the Village or the appellants,
23 please step over -- Wendy, are you swearing? No.
24 Thank you.

25 Do we swear in for both hearings at this time

1 or just --

2 MR. ENGELFRIED: Just the first hearing.

3 (Whereupon, Alex Cameron,
4 Jerome Rust, Amanda Fraiser, John Bizerik, Charles
5 Showalter, Carolyn Bohan Webber, were sworn to tell the
6 truth.)

7 VICE-CHAIR LATHAM: Let everyone get
8 reorganized. All right, as a reminder, the Board of
9 Adjustment's decision today must be based on competent,
10 material and substantial evidence that has been
11 presented into the record.

12 At this time, Alex, would you like to read
13 the notice into the record, and provide any backstory
14 on this application?

15 MR. CAMERON: I'll be glad to. Thank you. So
16 the purpose of this public hearing is to receive
17 testimony for the variance request from section 9. --

18 AUDIENCE MEMBER: I'm sorry, I can't hear.
19 Can you speak into the microphone?

20 MR. CAMERON: The purpose of this public
21 hearing is to receive testimony for a variance request
22 from section 9.28, tables of dimensional requirements,
23 for the property at 67 Deerwood Lane. This can be
24 further identified by the Moore County parcel ID number
25 00035903. This property is located in the R10 high

1 density residential zoning district. Specifically the
2 applicant, Jerome Rust, property owners John Bizerik
3 and Amanda Fraiser are requesting a variance from
4 30-foot lake front golf course setback from the
5 property line to allow the construction of a patio and
6 outdoor fireplace in the rear yard.

7 The planning inspection staff received a
8 submittal for such construction and based on feedback
9 from the staff, the submittal would be denied on the
10 interpretation that the property does abut the golf
11 course and that the 30-foot setback would not allow the
12 construction of the outdoor patio and fireplace as
13 presented in the paperwork.

14 VICE-CHAIR LATHAM: Thank you. At this time,
15 would Mr. Rust or the applicant, his party care to make
16 a...

17 MR. RUST: Good evening. Thank you for
18 having us here tonight. My name is Jerome Rust. I'm a
19 licensed landscape architect in the state of North
20 Carolina as well as a licensed landscape contractor --

21 MR. SILVERSTEIN: Mr. Rust, can I interrupt
22 you for a second? Madame Chair, can I address Mr.
23 Rust?

24 VICE-CHAIR LATHAM: Of course.

25 MR. SILVERSTEIN: Mr. Rust, are you an

1 attorney?

2 MR. RUST: No, sir, I'm not.

3 MR. SILVERSTEIN: Okay, you need to be aware
4 of the fact that the North Carolina State Bar has
5 determined that since this is a quasi judicial
6 proceeding, that anyone who attempts to represent a
7 third-party must be an attorney, a licensed attorney in
8 North Carolina. Since you are probably not aware of
9 that requirement, I don't think that the Board should
10 prevent you from giving evidence, but you need to be
11 careful. You're not permitted to present argument on
12 behalf of the property owners. They can represent
13 themselves and make whatever argument they want to, but
14 you are not permitted to do so, although you are
15 permitted to introduce evidence of the application for
16 the variances.

17 MR. RUST: That's what I intend to do, sir,
18 is enter evidence to help them make their case, yes.

19 MR. SILVERSTEIN: Thank you.

20 MR. RUST: So as I was saying, I'm a licensed
21 landscape architect as well as a licensed landscape
22 contractor. I have significant land planning
23 experience both in residential and golf course design
24 and construction. My career here has been over 17
25 years here. All in Moore County and so I'm quite

1 familiar with some of the issues here that we're facing
2 with this request.

3 I put together for you a PowerPoint
4 presentation to help you -- to help explain a few
5 things. I've also got a few documents that I've shared
6 with the staff, and I'll also pass out here as part of
7 this hearing.

8 First of all, just to orient you, this is
9 Deerwood Lane. Up here the intersection of Scioto
10 Lane. This is -- this property is next to the golf
11 green here, I believe it's the number eight green --
12 seventh green. And it is pretty much across from the
13 dam here on this pond, adjacent to the green complex.

14 So I've included an aerial photo here as
15 well. This is the applicant's home at this location
16 here. You can also see the topography, which is the
17 Moore County two foot contour interval. It's a 2017
18 aerial photo. The structure footprints have been
19 turned on here in gray, as well as some of the parcel
20 boundaries. The only thing that's a different existing
21 condition is there is now a home being built here which
22 you are seeing in some of the subsequent slides.

23 This is the view to orient you to the next
24 few slides. This is the applicant's home and this view
25 angle, this view triangle is kind of oriented

1 throughout this area of the drawings, so that you can
2 orient yourself to what we see and what the applicant
3 sees from their property.

4 This view is looking northeast from the
5 proposed patio back toward the green complex. This is
6 golf course property. I believe this is the stake that
7 marks the property corner for the property owner.
8 These trees are on the golf course's property, not the
9 applicant's property.

10 This is taken out a little bit closer to the
11 property line here looking back toward the green
12 complex. What we did is I walked out onto the green
13 complex and then kind of looked, trying to give you an
14 idea of what the panoramic looks like through here.

15 This is a new home that's being constructed
16 adjacent to the green complex. Straight ahead here you
17 can see the flag stick, which this is approximately the
18 center of the green complex. The applicant's patio
19 project is sort of behind these deciduous evergreen
20 trees.

21 I moved over almost to the edge of the lake
22 here, and green complex and looked back at the
23 applicant's home. Their project location would be
24 about here. This is the neighbor here at 65 Deerwood
25 Lane. This is his -- their home.

1 Just a view to the south of the green
2 complex, almost over to the cart path looking back at
3 the golf course this way, looking back at the
4 applicant's home I mean this way. Again, their patio
5 project would be kind of facing the foundation here.

6 Actually moved from the hedge row that abuts
7 the golf course and moved over in this direction and
8 looked back toward the patio project. The extent of
9 the patio project is about the width of that large
10 shrubbery here. That's approximately.

11 Moving into the home and going up the back
12 deck stairs. This is looking from the first floor.
13 This is a walk-out basement condition. Previous
14 pictures you saw looking from the applicant's property
15 out is from the ground floor out the back of the home.
16 So you can see the green complex would be here to your
17 right, to orient you. This is the dam feature here.
18 And this is actually golf course property. This is the
19 property corner here, going in this direction. That
20 line sort of extends across this way.

21 This would be looking back from the upper
22 deck on the first floor of the home back toward the
23 green complex. And then this would be looking from the
24 deck area back down toward the patio project, which
25 would be sort of replacing these evergreen shrubs here.

1 And this is sort of a panoramic view. If you
2 were standing at the landing of the deck here, before
3 you walked down into the yard and you started to look
4 toward the west and then swung around and looked toward
5 the east, this would be the view that you would see.
6 Again the green complex is over here and the project
7 site, proposed site, is over in this area.

8 As part of my experience as a landscape
9 architect working with golf course companies that
10 included Arnold Palmer and Jack Nicklaus's firm, these
11 are what was accepted in the industry at that time as
12 far as what we call the shot circles. These shot
13 circles, the particular one that's of interest here is
14 the par three. This is a par three hole that's
15 adjacent to their property. And the typical radius of
16 where we would draw a residential line would be at that
17 150 foot radius from the center of the green complex.
18 And so, Alex, has that been included in the black and
19 white drawings that show this 150 foot radius from the
20 golf course out to the parcels? If not, I have a
21 couple of extra 11 x 17 copies that I can submit into
22 evidence.

23 MR. CAMERON: Yes, correct, Jerome, what you
24 have provided, the Board members should have received.
25 That is -- you have it.

1 MR. RUST: You can see in that drawing that
2 the 150 foot radius from the center of the green
3 complex doesn't even really touch the applicant's
4 property corner, and as a design aspect of this
5 project, we even moved this patio project to the
6 complete opposite side of the property to further help
7 you know, mitigate for any issues.

8 There is a ten-foot utility easement in the
9 rear yard, and with a fireplace feature, there is a
10 combustible material setback from the home that we
11 would have to honor. But the 30-foot setback basically
12 comes to the edge of the patio.

13 As part of what we're looking at here is --
14 there's four questions that the Board has to evaluate.
15 One is the unnecessary hardship would result from the
16 strict application of the ordinance. What I would put
17 on the record here --

18 MR. SILVERSTEIN: Mr. Rust, that's where you
19 are getting into argument.

20 MR. RUST: Okay, well, I'll provide that to
21 our applicant and let them make the argument. I'm
22 available for any questions now or following the
23 applicant's introduction of evidence and their argument
24 in their case.

25 MR. ENGELFRIED: I have a question of staff,

1 and it relates to the pictures. It will just help me
2 get a perspective. It seems that the adjacent lot, it
3 has different numbers, but it is probably my eyes, in
4 one place it looks like 65, 68, 66. But in the
5 photographs, and it's the one, Alex, called the aerial
6 view, the second page of staff's presentation, down --
7 yeah.

8 The lot to the left, what is the shaded area
9 beyond the house? Is that a patio?

10 MR. CAMERON: I don't think I can
11 definitively answer that question, because it's faced
12 on -- the area in the photograph you have there --

13 MR. ENGELFRIED: Okay, might just suggest
14 that it's just a shadow, but that got me curious as to
15 whether there already was past practice in the
16 neighborhood.

17 MR. CAMERON: And I can't officially say
18 that. I'm sure if we had something on file, we would
19 have caught, without knowing the exact time of
20 construction for that.

21 MR. ENGELFRIED: Okay, so then thank you
22 again. Is that your home? The home in question, the
23 homeowner's here. He may be able to provide clarity on
24 that.

25 Would you just -- he's sworn, just show him

1 the picture and ask him if that's a shadow or a
2 structure?

3 MR. SHOWALTER: Just a shadow.

4 MR. SANTOWASSO: I've got a couple of
5 questions. Hello? I have a couple of questions of
6 the landscape architect pertaining to this drawing that
7 shows the Frazier residence, 67 Deerwood Lane, which
8 was prepared by Landscape Design Innovation Group dated
9 5/8/2018. Why are there more than one property line on
10 the front and the two side yards?

11 MR. RUST: That is the difference between the
12 actual survey lot lines and the GIS parcel lines. The
13 lines with the circles where they have the E or FIP,
14 those are the actual survey boundaries, and that is
15 what we based our setback calculations off of.

16 MR. SANTOWASSO: It looks to me like there is
17 already an infringement of the 30-foot setback to the
18 edge of the patio which shows a dimension of 28.8 feet.

19 MR. RUST: I can't speak to that, sir,
20 because I don't know when this house was built, and
21 when the deck or the extension was permitted.

22 MR. SANTOWASSO: Are you the original owner?

23 MR. BIZERIK: No, sir, I'm not. My wife and
24 I purchased this house last July. It is my
25 understanding that the home was built in 2004, but

1 whether this is original construction, I would assume
2 that it is, because the screened-in porch that is on
3 the first floor is a permanent structure.

4 MR. SANTOWASSO: Okay, and this is going to
5 be an at-grade patio and fireplace. There is some
6 substantial grade differential from the building out
7 toward the end of the patio. I assume that will be all
8 filled?

9 MR. BIZERIK: Yes, sir.

10 MR. RUST: Just to embellish on that, it's
11 less than the 30 inches required --

12 MR. SANTOWASSO: Yeah, that is all subject to
13 building inspection and all of that.

14 VICE-CHAIR LATHAM: Mr. Frazier, do you want
15 to continue your argument?

16 MR. BIZERIK: Yes, ma'am, if I could. I was
17 just waiting to see if anyone else has questions.

18 VICE-CHAIR LATHAM: Anymore questions of Mr.
19 Rust?

20 MR. KELLEY: I have another question for you.
21 On the same drawing that Leo was referring to a second
22 ago, I don't see a dimension that shows me the distance
23 from the fireplace out to the property line.

24 MR. RUST: Alex and I worked on that. It was
25 actually a part of the public notice. It was -- this

1 extends approximately 19 feet.

2 MR. SANTOWASSO: So the distance from the
3 edge of new construction to the property line is 11
4 feet.

5 MR. RUST: No, you can see the ten-foot
6 utility setback there. That --

7 MR. SANTOWASSO: Okay. So it's something
8 like 15, 16 feet?

9 MR. RUST: Nineteen, plus or minus.

10 MR. SANTOWASSO: You said that, 19 feet.
11 Thank you.

12 VICE-CHAIR LATHAM: Any other questions?
13 Okay, Mr. Frazier, thank you.

14 MR. BIZERIK: Actually my name is John
15 Bizerik, ma'am. My wife kept her maiden name. Some
16 comments I would like to make.

17 Strict application of the ordinance would
18 create an unnecessary hardship in that virtually an
19 entire rear yard would not be able to be used other
20 than for a grass lawn. No patio, or retaining wall,
21 fireplace, or fire pit, child swing set or accessory
22 structure would be permitted by the strict application
23 of the ordinance.

24 The hardship results from peculiarity in that
25 the parcel's location is not actually abutting the

1 playable area of the golf course. Rather the property
2 abuts property that is just zoned as the golf course.
3 We contest that the adjacent property zoned golf course
4 is not actually a playable area as it is a steep wooded
5 area and on the edge of a white area, most likely
6 wetlands. The closest point of the lot is the
7 northeast corner to the center of the golf green is
8 approximately 150 feet or 50 yards. Furthermore, the
9 nearest edge of the proposed patio retaining wall is
10 approximately 200 feet from the center of the golf
11 green. No action taken by the applicant created this
12 hardship.

13 The requested variance is consistent with the
14 spirit, purpose, and intent of the ordinance such that
15 public safety is secure and substantial justice is
16 achieved, in that the request is well beyond the
17 playable area of the golf green. This lot would be
18 considered an out of bounds area as the lot is outside
19 the typical 150 foot radius shot -- golf shot circle
20 from the center of the green complex, which is commonly
21 referred to by golf course and landscape architects as
22 the playable area of the course. And I can honestly
23 say I don't think I've ever seen a golf ball in our
24 backyard.

25 That's all I have to say unless you have

1 questions, ma'am.

2 VICE-CHAIR LATHAM: Any question for Mr.
3 Bizerik?

4 Okay, thank you very much.

5 MR. BIZERIK: Thank you.

6 VICE-CHAIR LATHAM: At this time would the
7 Village like to make any additional comments?

8 MR. CAMERON: I think we covered it all as
9 far as the Village is concerned.

10 VICE-CHAIR LATHAM: Is there anyone else who
11 is interested in testifying on this matter.

12 MR. SHOWALTER: My name is Charles Showalter.
13 I'd rather sit if I could. I just had hip surgery. Is
14 that okay?

15 VICE-CHAIR LATHAM: Yes.

16 MR. SHOWALTER: Appreciate that. Thank you
17 for asking me to come. I appreciate being here. I
18 think the thing that I would say first of all is, I
19 think it is important to be a good neighbor. I
20 unfortunately was out of town for two weeks, and John
21 my neighbor, we haven't been able to get together other
22 than a phone call. There are certain things that
23 concern me about this. The patio doesn't concern me in
24 relation to the property. The fireplace does concern
25 me. Nowhere on the drawing is there any statement or

1 any comment in regards to the height of this fireplace
2 and the chimney. I have been advised by John that it's
3 to be eight foot tall. Now, being a good neighbor, I
4 have not gone over to his property to look to see
5 exactly where everything is going to be. I for one,
6 being the next door neighbor, would like to see some
7 stakes put in, possibly some sort of a structure built
8 just as a temporary to give me an idea of where the
9 chimney is going to be, where the fireplace is going to
10 be.

11 The patio doesn't concern me. That's not
12 really in my sight line. But an eight-foot chimney
13 could be. If you noticed in the photographs, my house
14 and my deck look directly looking toward the green and
15 toward the lake. I look directly across his back yard.

16 So there is some things there that concern me
17 before I would want approval of this from you people.
18 I think there is some answers that need to come forth
19 and I would appreciate hearing from you. Thank you for
20 the opportunity

21 VICE-CHAIR LATHAM: Thank you. At this time,
22 Mr. Rust, Mr. Bizerik, are there any other comments you
23 would like on the record?

24 MR. RUST: As you can see this is the
25 adjacent property owner's home. I just would like to

1 revisit that with the Board real quick. The project
2 area would come out to about where these very large
3 hedges are, and that there is a significant obstruction
4 of the view already from certain aspects of the green
5 complex from the adjacent owner's home. These trees
6 are not on Mr. Bizerik and Ms. Frazier's property.
7 This is on the golf course's property.

8 But you can see here in this picture --
9 sorry. In this picture here, this is approximately the
10 location of where that patio and fireplace would be.
11 Even if it came out to this point, there are some very
12 large shrubs here that would be taken out and there is
13 still a very significant and wide view from the
14 adjacent property owner's property toward the green
15 complex and the lake.

16 Again, this would probably be about the
17 extent of where this fireplace would be, and it's a
18 narrow chimney about eight feet tall, and it would be
19 at grade, so it would be on the grade that is actually
20 far lower than the adjacent property owner's deck. So
21 in my opinion, he would see over it.

22 MR. ENGELFRIED: We are not in the design
23 business on this Board, but I would ask the Village to
24 comment. There must be in either the building codes or
25 fire codes or both, definition of acceptable heights on

1 structures like this one being considered?

2 MR. CAMERON: As far as zoning, the Village
3 differentiates between accessory buildings and
4 basically like a shed, anything that has the dimension
5 greater than 12 feet it becomes an accessory structure.
6 The building code -- I'm not a building code official,
7 so I couldn't speak, but I would have to think that
8 there are some regulations in place for that. We do
9 have an obviously height requirement within the
10 building code too. I don't think we are going to see a
11 35-foot fireplace anywhere however.

12 But thereagain, with an accessory building,
13 typically they are allowed a little more relief about
14 location and setbacks than the principle building, and
15 so if it's not in that building envelop, it wouldn't be
16 permitted typically to go over -- depending on the type
17 of structure, our ordinance differentiates between
18 offensive wall and columns, but thereagain, this
19 wouldn't apply to that.

20 MR. SILVERSTEIN: Mr. Chair, it is within the
21 Board's discretion to put a height limit on any
22 structure.

23 MR. ENGELFRIED: It is within our discretion,
24 thank you.

25 MR. SILVERSTEIN: As a condition of the

1 granting of the variance.

2 MR. SANTOWASSO: I see another individual in
3 the room who was a representative of a significant
4 adjoining owner, and I wonder if he would have any
5 comments to make concerning this application and its
6 impact on the golf course. And Mr. Farren, if I'm
7 putting you in a barrel, please let me know.

8 MR. FARREN: You already have. I am not
9 sworn in yet, but I would have no comments regarding
10 this. But if I have to be sworn in to say I have no
11 comment, I can do that.

12 MR. SANTOWASSO: If you have a comment, I
13 would like to hear it.

14 (Whereupon, Bob Farren was
15 sworn to tell the truth.)

16 MR. FARREN: I have no comment. It looked to
17 me -- knowing the site, you know, that we have the
18 trees behind the green, I doubt if we will even realize
19 it's there from a golf course perspective.

20 VICE-CHAIR LATHAM: Thank you.

21 At this time, I would like to advise everyone
22 that the hearing will be left open during the Board's
23 initial discussion. In the event that there are any
24 additional questions for the applicant or the staff,
25 the Board will direct our questions to you. And the

1 hearing will close before our vote.

2 Yes.

3 MR. SHOWALTER: I would like to ask a
4 question in regards... if this is approved, are we
5 opening up a can of worms that now everybody is allowed
6 to add to their properties (inaudible) such as mine.
7 In other words, I would be eligible to put a 12-foot
8 addition on my deck, and I would still be in line with
9 the property owner that is here today? Everybody else
10 up and down the golf course?

11 VICE-CHAIR LATHAM: We'll take your question
12 as a comment and take that under advisement. Thank
13 you.

14 MR. SILVERSTEIN: I would note that each case
15 is considered on its own merits and this would not set
16 a precedent unless a case exactly like it was presented
17 to the Board.

18 VICE-CHAIR LATHAM: Thank you. At this time
19 we will open ourselves up to discussion.

20 MR. KELLEY: I have a few questions still.

21 VICE-CHAIR LATHAM: Yep, go ahead.

22 MR. KELLEY: So the gentleman, Mr. Rust
23 presented us the dimensions from the shot circles.
24 What's the reference for this? I heard standard,
25 accepted, but is this from some safety manual, from the

1 manual for golf course architecture, where do these
2 come from?

3 MR. RUST: It's just -- during my eight and a
4 half years of practice as a landscape architect and
5 working with golf course designers, this was the
6 acceptable dimensional requirements that we have used
7 around the fairways for the shot circles and the -- not
8 only at the tee boxes, the landing areas, mid fairway
9 as well as the green. And we always have, you know,
10 the property start there and work back away from that.

11 MR. KELLEY: So from your experience as
12 landscapers --

13 MR. RUST: Yes, sir, from my experience. I
14 mean I have work with Tom Fazio and Arnold Palmer and
15 Jack Nicklaus (inaudible) we've worked with plenty, and
16 it is an acceptable dimension standard for all of those
17 golf course architectural folks.

18 MR. KELLEY: Thanks. Now, my next question
19 is for Alex. Does the Village -- in developing the
20 setback distances that we have in the PDO, do we have
21 anything that looks like that, that's how we developed,
22 or where does the 30 feet come from?

23 MR. CAMERON: Good question. Understand I
24 wasn't involved with any deliberations in crafting the
25 current or any really previous development ordinances.

1 The spirit and intent of that is to not have any impact
2 on the golf course. We have a definition of golf
3 course. We obviously being a lay person and Jerome's
4 work and design, and Mr. Farren's as well, the shot
5 circles are nothing I have ever known about. So I feel
6 confident enough that was not incorporated into the
7 Village incorporated a 30-foot golf course setback, if
8 that answers ...

9 MR. KELLEY: Understood. Yes, thank you.
10 The follow-on question for you. How does the Village
11 define golf front?

12 MR. CAMERON: We have a definition of golf
13 course, and it is defined as, a course with nine or
14 more holes for playing golf, including any accessory
15 driving range, club house, office, restaurant,
16 concession stand, picnic tables, pro shop, maintenance
17 building, restroom facility or similar accessory use or
18 structure. This term shall not include miniture golf
19 courses as a principle or accessory use, nor shall it
20 include driving ranges which are not accessory to a
21 golf course.

22 MR. KELLEY: Understood. So you were saying
23 earlier that -- I don't remember if you said the
24 request came to you or if it had come to you, it would
25 have been disapproved because -- but is it your -- is

1 the Village's position that this is a golf front
2 property or it abuts the golf course, or no?

3 MR. CAMERON: An application did come before
4 the Village and the Village's stance is that, that is
5 what we would apply that the rear of that property, we
6 would apply to golf course 30-foot setback.

7 MR. KELLEY: What about the property that's
8 -- I'm assuming that the other gentleman that spoke was
9 on lot 236, would he also be?

10 MR. CAMERON: That is to the west, is that
11 the lot you're talking about, if you're looking at --
12 this one?

13 MR. KELLEY: Yes, for example.

14 MR. CAMERON: Yes, the rear of that property
15 --

16 MR. KELLEY: That would also be considered in
17 the 30-foot setback?

18 MR. CAMERON: Correct, would be applied there
19 as well.

20 VICE-CHAIR LATHAM: In a related question,
21 thinking about number six, and I could see this a bit
22 better when I was at my own computer looking at Google
23 Maps. If we think about number six, how many homes,
24 and this is probably going to be an estimate, would you
25 consider are situated not directly on a fairway, or on

1 a tee box, or on a hole, but are in this sort of out of
2 bounds area?

3 MR. MARSH: Well, I can think of at least
4 two.

5 VICE-CHAIR LATHAM: I can think of two too.
6 And they are both on Deerwood Lane, but you know,
7 thinking about Peachtree where we have those
8 situations, where -- particularly where a road that's
9 sort of curving around the end of a hole.

10 MR. CAMERON: I would say that the Village's
11 stance is that it makes it very difficult at times for
12 us to make a determination on that, and we are not
13 allowed to exercise discretion. So we have to be bound
14 by what we have within our development ordinance. And
15 based on the definition that you just heard me read, we
16 obviously look at these case by case as well. That is
17 why we have applied that determination to this case.
18 And to answer your question, without having a map in
19 front of me, there is no way I can tell. I am sure
20 there is others that would make things maybe not as
21 clear cut as others, they aren't backed on a defined
22 fairway green, tee box, et cetera.

23 VICE-CHAIR LATHAM: I'll say to my fellow
24 Board members, for the purposes of our discussion, when
25 I was looking at Google Maps today and trying to get a

1 good idea of what I was looking at here, there -- of
2 course there aren't -- I can't tell whether or not the
3 lots have the same kind of incline, the same kind of
4 distance, the same kind of, you know, tree situation
5 between it and the tee box, but there are a number of
6 homes --

7 MR. ENGELFRIED: Hundreds.

8 VICE-CHAIR LATHAM: In number six who are
9 dealing with this 30-foot setback against the out of
10 bounds area.

11 MR. KELLEY: I'd like to go on. This one is
12 for Mr. Bizerik?

13 MR. BIZERIK: Yes, sir.

14 MR. KELLEY: Can you tell me what the nature
15 of the fireplace is? Is it for heating for folks that
16 are sitting out, or is this like an outdoor pizza oven?
17 What is this?

18 MR. BIZERIK: Well, sir, it is going to be a
19 patio. Currently the patio that we have back there is
20 underneath of the screened-in porch. So we wanted an
21 open patio up to the sky. And we wanted to have an
22 outdoor fireplace. We have a gas burning fireplace
23 inside the house, but we wanted a wood burning
24 fireplace outside simply for gatherings to go outside
25 and enjoy ourselves, watch a fire.

1 MR. SANTOWASSO: Does it have to have a
2 chimney? You can have a grill or fireplace without a
3 chimney.

4 MR. BIZERIK: Sir, my understanding is that
5 it does have to be a chimney based on the Pinehurst
6 building fire codes governing outdoor fire pits. They
7 have to be -- I believe it's 25 feet or 30 feet away
8 from an existing structure, and that would put us all
9 the way up to the golf course property. You can
10 actually see a small fire pit that I have, and that is
11 -- based on a measuring tape from my house, that's at
12 the property line and it matches fire codes for an
13 outdoor fire pit in Pinehurst.

14 MR. KELLEY: Are you worried at all that when
15 you have the fire burning in the fireplace that the
16 winds blow the wrong way you're going to smoke yourself
17 out in your own house?

18 MR. BIZERIK: No, sir. We don't usually open
19 the windows. The windows directly above that belong to
20 my daughter, so we wouldn't be opening the windows and
21 predominately it would be in the fall or winter time,
22 so the windows wouldn't be open anyway.

23 MR. RUST: If I may just expand on that just
24 a little bit. As part of the design process, that
25 that's exactly what we looked at. Fire pits had to be

1 further away, so fireplaces could be closer, so that is
2 what we ended up doing was creating a fireplace, so
3 that we could pull it in and try to be -- follow the
4 spirit of the ordinance and bring this in as close as
5 possible to the property, from a view shed perspective
6 for the adjacent owner, but also for the golf course.

7 VICE-CHAIR LATHAM: Any other discussion or
8 questions among the Board?

9 At this time I am going to ask for a motion
10 to close the public hearing, and we will re-enter to
11 our regular Board of Adjustment meeting.

12 MR. ENGELFRIED: So moved.

13 MR. SANTOWASSO: Second

14 VICE-CHAIR LATHAM: A voice vote. All in
15 favor?

16 (All respond Aye.)

17 VICE-CHAIR LATHAM: Thank you, the motion has
18 carried and we are back in regular session. At this
19 point we have an application for a variance in front of
20 us. The request is to encroach into the required
21 30-foot golf course setback to allow the construction
22 of an outdoor fireplace and patio. As has been shared
23 with us today, this would put the edge of the proposed
24 patio about 19 feet away from the property line.

25 We have always heard concerns from a

1 neighboring property that the proposed eight-foot
2 fireplace chimney would obstruct his view line. He
3 doesn't have concerns about the patio itself, however
4 he is concerned about the height of the chimney.

5 With the variance there are four standards of
6 review that must be met. First that unnecessary
7 hardship would result from the strict application of
8 the ordinance. It is not necessary to demonstrate that
9 in the absence of the variance. No reasonable use can
10 be made of the property.

11 Second the hardship results from conditions
12 that are peculiar to the property such as location,
13 size and topography. Hardships resulting from personal
14 circumstances as well as hardships resulting from
15 conditions that are common to the neighborhood or the
16 general public may not be the basis for granting a
17 variance.

18 Third, the result did not -- excuse me. The
19 hardship did not result from actions taken by the
20 applicant or the property owner. The act of purchasing
21 property with knowledge that circumstances exist that
22 may justify the granting of the variance shall not be
23 regarded as self-created hardship.

24 Finally, the requested variance must be
25 consistent with the spirit, purpose and intent of the

1 ordinance such that public safety is secured and
2 substantial justice is achieved.

3 Board, we have three options before us at
4 this time. We can approve the variance. We can
5 approve the variance with conditions, or we can
6 continue this meeting to another date for a
7 determination.

8 At this time is there a motion before us?

9 MR. SANTOWASSO: Before we get to that, I
10 believe that the applicant has met the four standards
11 of review, and I would like to discuss a condition, and
12 if that would be agreeable with the Board, I can then
13 incorporate a motion.

14 The condition that I would impose on the
15 applicant is that the fireplace be constructed with a
16 chimney that meets the minimum standards of height for
17 safety and other purposes as contained in the Village
18 Code in the fire code, so that at least we can be
19 assured that the chimney isn't eight feet tall or
20 twelve feet tall, but can be the minimum size that
21 would be approved by any agency having jurisdiction.

22 MR. ENGELFRIED: Can you clarify that for me?
23 I think I know what you're saying. You're suggesting
24 that what ever the applicable code or regulation is,
25 the chimney would be constructed to the minimum.

1 MR. SANTOWASSO: That's correct.

2 MR. ENGELFRIED: And there would be no
3 flexibility to go -- okay.

4 MR. SANTOWASSO: That's correct.

5 MR. ENGELFRIED: So if the minimum happened
6 to be nine feet, it would end up being nine feet. If
7 it's six feet, six --

8 MR. SANTOWASSO: That's correct.

9 MR. SILVERSTEIN: Who is going to establish
10 the minimum?

11 MR. SANTOWASSO: The existing code.

12 MR. SILVERSTEIN: Does the code do that?
13 That is the question.

14 MR. CAMERON: I can speak for zoning, and I
15 don't think it clearly defines that, and I am not
16 qualified to speak on behalf of the fire martial or
17 building commissioners.

18 MR. SANTOWASSO: How about if I ask the
19 property owners, that he in turn be a good neighbor and
20 construct it to the minimum height permitted, or
21 allowed, or whatever, what have you.

22 VICE-CHAIR LATHAM: You're back in the same
23 kettle of fish.

24 MR. MARSH: How did you arrive at the eight
25 foot height?

1 MR. SILVERSTEIN: You've closed the hearing.
2 You can reopen it, but you can't take any testimony
3 until you do.

4 VICE-CHAIR LATHAM: Would you all care to
5 reopen?

6 MR. MARSH: Yeah, please do.

7 VICE-CHAIR LATHAM: At this time we are going
8 to reopen Public Hearing Number One. Do we have a
9 motion to do so?

10 MR. ENGELFRIED: Motion from me.

11 VICE-CHAIR LATHAM: A second?

12 MR. MARSH: Second.

13 VICE-CHAIR LATHAM: All in favor?

14 (All response Aye.)

15 VICE-CHAIR LATHAM: We are back in hearing
16 number one. Mr. Marsh, please proceed.

17 MR. MARSH: How did you arrive at the
18 eight-foot height for the fireplace, please?

19 MR. RUST: The fireplace was selected based
20 on cost, obviously. This is a pre-manufactured
21 fireplace that comes as a kit. It comes in two pieces.
22 There is kind of a box and then the chimney. I feel
23 like in the spirit of intent in what we were doing from
24 a design standpoint was trying to be a good neighbor.
25 We did not add a pizza oven to the top of this

1 fireplace, which is an add-on feature, that would
2 increase it by another approximately three feet.

3 The other thing is the applicant and I worked
4 closely together to select a fireplace that actually
5 had a taper from the fire box to the chimney, so it
6 narrows.

7 And honestly if, you know, I think there is a
8 lot of shrubbery that can be planted, small trees,
9 without any kind of permit, variance, or anything from
10 the Village that would be far more obstructive to the
11 adjacent owner's view, as well as the fact the golf
12 course is maintaining the evergreens and deciduous
13 under story trees immediately adjacent to the green
14 complex.

15 You know, it's very hard -- I went out there.
16 I've showed you several pictures that our applicant
17 doesn't really have a view of the golf course
18 unfortunately. And that is part of the peculiarity of
19 this lot, is that it basically backs up to the back of
20 a dam and a sand path, and wetlands and pretty thick
21 forest.

22 MR. SANTOWASSO: Adding more trees defeats
23 the purpose of further blocking the adjoining
24 neighbor's view, so that's not going to -- so this is
25 not a brick fireplace. This is metal or something

1 MR. ENGELFRIED: Pre-fab.

2 MR. RUST: It's pre-fab concrete that looks
3 like stone.

4 MR. ENGELFRIED: I didn't think our decision
5 has to be guided by the choice of materials or the fact
6 that it is pre-fab versus built from scratch.

7 VICE-CHAIR LATHAM: Since we are still in our
8 hearing and not our regular session, I am going to ask
9 an additional question of you, Mr. Rust. Is there --
10 you've worked in this area a long time?

11 MR. RUST: Yes, ma'am.

12 VICE-CHAIR LATHAM: And my understanding is
13 you have done many similar projects all over Pinehurst.
14 Is there something that you can tell me about this
15 particular property that would help me understand its
16 peculiarity beyond the fact that it is adjacent to an
17 out of bounds area of the hole.

18 MR. RUST: The back side of the golf hole,
19 yeah. The other peculiarity I would say is that it is
20 quite steep in the backyard, and that there aren't many
21 opportunities to have a flat place to gather in the
22 back yard. And the other peculiarity would be is there
23 is a much cheaper option for the applicant, which is to
24 do a fire pit, which is far more common all throughout
25 our community, but that would be right basically at the

1 property line, almost not even able to do it because of
2 the property line as you see here, the setbacks already
3 we're almost at the setback line. That is kind of
4 peculiar.

5 Also this area acts, especially with that
6 home next door, there is going to be significant storm
7 water that's going to come kind of through this yard.
8 So putting -- you know, there's very little place else
9 to put the patio if this whole lot is considered
10 backing to the golf course. So having this patio up
11 closer to the house kind of utilizing the grade that is
12 up near the house, is like I said, far -- I think far
13 less intrusive because of the peculiarity that it
14 accepts storm water from the adjacent lots as well as
15 the steep grade.

16 VICE-CHAIR LATHAM: Thank you.

17 MR. SANTOWASSO: So the top of this chimney
18 would be relatively the same elevation as the main
19 floor of the building, first floor elevation?

20 MR. RUST: Yes, sir, close to that. Yes,
21 sir.

22 VICE-CHAIR LATHAM: Any other discussion?
23 Okay. Do I hear a motion to close the public hearing
24 and re-enter our regular Board of Adjustment meeting?

25 MR. SANTOWASSO: So moved.

1 MR. ENGELFRIED: Second.

2 VICE-CHAIR LATHAM: All in favor?

3 (All respond Aye.)

4 VICE-CHAIR LATHAM: Our Public Hearing Number
5 One is again closed and we are back in our regular
6 session. I have read the requirements for the
7 variance. I've listed our options, either approve the
8 variance, approve the variance with conditions, or
9 continue the meeting to another date for a
10 determination. Are there any motions before us?

11 MR. KELLEY: Can I go back -- Leo was saying,
12 hey, in his opinion all of the -- the unnecessary
13 hardship and all that is all satisfied. Can you help
14 me understand how this is a hardship, not having a
15 patio or a fireplace in the backyard creates a
16 hardship.

17 MR. SANTOWASSO: That doesn't create a
18 hardship.

19 MR. KELLEY: What is then -- how -- because
20 -- let's see, shall not grant the variance unless you
21 find that unnecessary hardship would result from the
22 strict application of the ordinance.

23 MR. ENGELFRIED: David, for one thing, the
24 law is not going to be helpful to us in defining the
25 word "hardship". Our experience is that is in the eyes

1 of the beholder as I understand it. And we'll all have
2 different interpretations --

3 MR. KELLEY: My eyes are having trouble
4 beholding that then.

5 MR. ENGELFRIED: There's nothing we can rely
6 on that says it clearly is or isn't. it's how we feel
7 tonight based on what has been present to us.

8 MR. KELLEY: For example, if you wanted to
9 expand your house because you had an additional child
10 and you wanted to add a bedroom, you know, having to
11 put three children in one bedroom, I can understand
12 that would be a hardship for example.

13 MR. ENGELFRIED: You'd get more votes then on
14 that one.

15 MR. SILVERSTEIN: Can I comment on that one
16 for a second?

17 MR. KELLEY: Go ahead.

18 MR. SILVERSTEIN: Your example is not a
19 hardship, because that is not peculiar to the property?

20 MR. KELLEY: We'll we've got to have it in
21 the eyes of the beholder, right?

22 MR. SILVERSTEIN: It has to be -- the
23 hardship has to related to the property. So to the
24 extent that someone's family expands, has nothing to do
25 with the property.

1 MR. KELLEY: Okay.

2 MR. SILVERSTEIN: The basis for the hardship
3 in this case is topography, and that is listed in the
4 second one as a reasonable basis for topography. I am
5 not saying it is sufficient to justify the granting of
6 a variance, but I am saying that that is the basis they
7 are listing -- you asked what the hardship was; what
8 they are telling you is it's the topography of the
9 property, the slope. You don't have to accept that. I
10 am just telling you that's what they're saying.

11 MR. KELLEY: No, I'm trying to get my head
12 around why that's a hardship, but okay.

13 VICE-CHAIR LATHAM: Where I similarly --
14 continuing looking at that second condition where it
15 talks about hardship may not result from personal
16 circumstances, as well as hardships resulting from
17 conditions that are common to the neighborhood may not
18 be the basis of granting a variance, and you know, that
19 question of what is common. Well, there are two houses
20 next door to each other that are experiencing the same
21 commonality. If as we go through number six, I am sure
22 we are going to find a number of homes that similarly
23 are at that out of bounds range. And while we consider
24 each individually and this is not creating a precedent,
25 that question of commonality to the neighborhood is the

1 place where I find myself stumbling.

2 MR. SANTOWASSO: Well, he's not claiming that
3 he wants the variance because everybody else is doing
4 it. He's not doing that.

5 VICE-CHAIR LATHAM: That is not the
6 requirement either.

7 MR. SANTOWASSO: Everything is on a case by
8 case, site by site basis.

9 VICE-CHAIR LATHAM: Correct, however if it's
10 common to the neighborhood, it's not appropriate for a
11 variance.

12 MR. SANTOWASSO: I agree, but I am going to
13 make a motion.

14 VICE-CHAIR LATHAM: Okay.

15 MR. SANTOWASSO: That the variance request be
16 approved without conditions.

17 VICE-CHAIR LATHAM: Let me ask at this time,
18 do we see whether there are any other motions, or do we
19 do a vote on Leo's and see if any motions follow?

20 MR. SILVERSTEIN: You would need to see if
21 there's a second to that motion.

22 VICE-CHAIR LATHAM: Leo has presented a
23 motion that the variance be granted without any
24 conditions. Are there any seconds to Leo's motion?

25 MR. MARSH: Second.

1 MR. SILVERSTEIN: It would be appropriate to
2 have any further discussion on that motion, and then
3 take a vote.

4 VICE-CHAIR LATHAM: At this time is there any
5 further discussion on that motion?

6 MR. ENGELFRIED: I would go back to Leo's
7 original motion and ask you to consider a friendly
8 amendment based on his first one, which would be to
9 restrict the height of the fireplace to seven feet for
10 example. We are not compelled by the materials that
11 have been selected or planned. We are compelled to
12 make the best decision we can based on the evidence
13 presented.

14 MR. SANTOWASSO: Well, the first was not
15 really a motion. That was just a proposition I guess.
16 But I would accept your condition.

17 MR. MARSH: How can we limit --

18 MR. SILVERSTEIN: If the seconder accepts
19 that condition.

20 VICE-CHAIR LATHAM: Mike, do you accept the
21 condition that Fred has proposed?

22 MR. MARSH: Yes, I accept the friendly
23 amendment to limit the height to seven feet.

24 MR. SILVERSTEIN: Now you do have a motion on
25 the floor to discuss.

1 VICE-CHAIR LATHAM: We have a motion on the
2 floor to discuss; accepting the variance with a
3 friendly amendment that the height of the fireplace be
4 limited to seven feet. Is there any discussion?

5 MR. KELLEY: In my experience, usually the
6 height of a fireplace is not limited to be as small as
7 possible, but raised so that the smoke plumb goes free
8 of adjacent structures. So I don't -- I'm not sure
9 where we're coming up with seven feet. I'm not sure
10 where eight and a half feet comes from. But without
11 fire code or comments from someone with that authority,
12 I don't know if we can say something like that.

13 MR. MARSH: The applicant, if he cannot match
14 the seven feet, then he won't provide a fireplace. If
15 he can't get a fireplace that is under seven feet or
16 under, then he just won't be able to complete the
17 project.

18 MR. KELLEY: What I'm getting at is we're
19 kind of pulling an arbitrary number. I'm not sure --
20 Fred, maybe you have experience in this and I'm missing
21 something. But asking four feet, five feet, where is
22 that coming from. And if we -- in so doing, if we
23 create something that now the smoke plumb goes in the
24 second floor bedroom of his daughter and then years
25 from now there is a problem, that -- and we are the

1 guys that said seven feet.

2 I mean we've had some discussion where hey,
3 we want a fire pit, but if we make a fire pit, we got
4 to go 30 feet from the structure because a fire pit
5 creates a hazard and we don't want it, you know,
6 endangering structures, the embers and that sort of
7 thing, I imagine.

8 So, again, but again, 30 feet would be beyond
9 the property line. So now we're going for a fireplace
10 and we want -- because if we have a fireplace, then we
11 can put it at whatever -- 15 feet, whatever it was. I
12 forget the number off the top of my head.

13 MR. MARSH: I guess I am on number four, the
14 requested variance is consistent with the spirit,
15 purpose and intent of the ordinance which is allowed
16 for property owner to enjoy his property without
17 impeding enjoyment of any of his neighbors. And I
18 believe this motion and friendly amendment does that.

19 MR. KELLEY: So what you're saying is that
20 you believe that lowering the fireplace helps him enjoy
21 his property but doesn't impede on the neighbors
22 enjoyment of their property?

23 MR. MARSH: Exactly.

24 MR. KELLEY: And I'm saying I think it does
25 the opposite. I think if you light up your six foot

1 fireplace and the wind's blowing in the direction and
2 it's coming into my house, I'm not going to be very
3 happy about that.

4 MR. MARSH: A motion is on the table.

5 VICE-CHAIR LATHAM: Is there any further
6 discussion on this motion?

7 Okay, at this time let's do a voice vote on
8 the motion that is before us that was proposed by -- it
9 was a friendly -- it was proposed by Leo with a
10 friendly amendment by Fred, seconded by Mike. And that
11 was to approve the variance with a friendly amendment
12 to limit the height of the chimney to seven feet.
13 We'll just go down the table. Leo?

14 MR. SANTOWASSO: Approve.

15 MR. KELLEY: I disagree, don't approve it.

16 VICE-CHAIR LATHAM: I disagree and don't
17 approve.

18 MR. ENGELFRIED: I approve.

19 MR. MARSH: I approve.

20 MR. SILVERSTEIN: The motion passes but the
21 variance is not granted because four affirmative votes
22 are needed to approve a variance.

23 MR. ENGELFRIED: We have a choice, however,
24 we can make another motion about the variance. And I
25 would encourage you to do that, Leo.

1 MR. SANTOWASSO: You want to do it?

2 MR. ENGELFRIED: No. You go ahead.

3 MR. SANTOWASSO: I make the motion to approve
4 the variance request with no conditions.

5 MR. ENGELFRIED: You need a second.

6 VICE-CHAIR LATHAM: Is there a second for
7 Leo's motion to approve the variance request with no
8 amendments?

9 Second?

10 MR. ENGELFRIED: I will second it.

11 VICE-CHAIR LATHAM: Okay, the motion has been
12 made and seconded to approve the variance request with
13 no amendments. It's been seconded by Fred. We'll do a
14 voice vote. Leo?

15 MR. SANTOWASSO: I approve.

16 VICE-CHAIR LATHAM: David?

17 MR. KELLEY: I don't agree.

18 VICE-CHAIR LATHAM: I don't agree. Fred?

19 MR. ENGELFRIED: I approve.

20 VICE-CHAIR LATHAM: Mike?

21 MR. MARSH: I approve.

22 VICE-CHAIR LATHAM: Once again, the motion
23 has passed but the variance is not accepted because we
24 need four positive votes to accept the variance. Is
25 there another motion that would like to be put forth

1 before the Board?

2 I will move to approve the variance with the
3 condition that there be no fireplace attached. Is
4 there a second to my motion that the variance be
5 approved?

6 MR. KELLEY: I'll second that.

7 VICE-CHAIR LATHAM: Motion is made by myself,
8 seconded by David that the variance be approved without
9 the fireplace. Voice vote. Leo?

10 MR. CAMERON: Can I interrupt? Just to
11 clarify, this would be -- the proposal was to grant a
12 variance for the construction of a patio, correct?
13 With the similar dimensional encroachment that was
14 mentioned of 19 feet as shown in those plans; as you
15 see the fireplace does extend out a little further than
16 what the patio did, just in order to be clear.

17 VICE-CHAIR LATHAM: Thank you. Thank you
18 Alex. I will amend my motion then. Looking at the
19 rendering, the drawing, that I propose that the patio
20 be, I don't know if the right word is squared off to
21 omit the -- what would be the --

22 MR. SILVERSTEIN: Actually, the preference
23 would be to grant a variance with a certain number of
24 feet. There is no evidence as to what that figure is
25 that I can recall. There was I think an estimate of 19

1 feet of -- that would be an 11 foot variance for the --

2 VICE-CHAIR LATHAM: Right, the 19 included
3 the fireplace though. You can see where the fireplace
4 is butting out.

5 MR. KELLEY: If it weren't golf front
6 property or whatever the verbiage is, what would be the
7 setback, 15?

8 MR. CAMERON: Ten.

9 MR. KELLEY: So we could in effect determine
10 that, yeah, this wasn't golf -- adjacent golf course
11 property?

12 The diagram that the gentleman presented us
13 to have a little bit more basis than our -- maybe our
14 PDO does. I don't know.

15 VICE-CHAIR LATHAM: Sorry, I'm looking at
16 this and trying to reconsider what my proposal would
17 be.

18 MR. CAMERON: Just based on an approximate,
19 and to have a clear round number, I know Leo doesn't
20 have his scale with him, but judging by the scale on
21 what Mr. Rust provided, it looks like that patio, I'd
22 say plus or minus around 20 feet from that rear
23 property line, if you're looking for a clear
24 delineation or a good round number, so to speak. And
25 getting to what David had mentioned, accessory

1 structure setback not on a golf course, is ten feet in
2 the zoning district.

3 VICE-CHAIR LATHAM: All right. I will try
4 again with my motion. Thanks. I would like to present
5 a motion that we approve the variance with the
6 condition that the patio not include a fireplace and
7 recognize a 20-foot setback from the property line.

8 MR. KELLEY: Second that.

9 VICE-CHAIR LATHAM: Leo, for a voice vote?
10 The motion is for the patio to be constructed without
11 the fireplace, but recognizing a 20-foot setback from
12 the property line. I have moved. David has seconded.

13 MR. SANTOWASSO: You need a second?

14 VICE-CHAIR LATHAM: No, David has seconded.
15 We are doing the voice vote.

16 MR. SANTOWASSO: I was trying to measure
17 something, but I am try to reduce things down -- Yes.

18 VICE-CHAIR LATHAM: David?

19 MR. KELLEY: Yes.

20 VICE-CHAIR LATHAM: Yes.

21 MR. ENGELFRIED: Yes, with an explanation, I
22 don't think it's the best solution, but I'm going to do
23 what I can to move this along.

24 MR. MARSH: Yes.

25 VICE-CHAIR LATHAM: The motion has been made

1 and seconded, and carried that the variance be approved
2 with the patio recognizing a 20-foot setback and not
3 including a fireplace.

4 At this time the Board will stand in recess
5 for five minutes, and then we'll go move into public
6 hearing number two. Thank you.

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**BOARD OF ADJUSTMENT
JUNE 7, 2018
COUNCIL CONFERENCE ROOM
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
5:30 PM**

MINUTES

BOARD MEMBERS IN ATTENDANCE:

Fred Engelfried, Chair
Julia Latham, Vice-Chair
David Kelley, BOA
Mike Marsh, BOA
Leo Santowasso

Staff in Attendance:

Will Deaton, Planning and Inspections Director
Alex Cameron, Senior Planner
Gwendy Hutchinson, Planning and Administrative Assistant

Attorney in Attendance:

John Silverstein, BOA Attorney

Court Reporter:

Sandra Wise, President Starkings Court Reporting

I. Call to Order

Chairman Engelfried confirmed there was a quorum present and called the meeting to Order.

Chair Engelfried recognized Julia Latham who is Vice-Chair and stated that she will conduct the Public Hearings and the balance of the BOA meeting.

II. Approval of Minutes and Findings of Fact

A. May 3, 2018

Leo Santowasso made a motion to approve the May 3, 2018 Minutes; Mike Marsh seconded the motion, which was unanimously approved.

David Kelley made a motion to approve the Findings of Fact for May 3, 2018 for a variance at 38 Chinquapin Road; Leo Santowasso seconded the motion, which was unanimously approved.

Poll the Board

<i>Leo Santowasso</i>	<i>Yes</i>
<i>David Kelley</i>	<i>Yes</i>
<i>Julia Latham</i>	<i>Yes</i>
<i>Fred Engelfried</i>	<i>Yes</i>
<i>Mike Marsh</i>	<i>Yes</i>

Vice-Chair Latham thanked Chair Engelfried and reminded the Board that the meeting is videotaped and to speak into the microphones.

Chair Engelfried stated that he will need to sign the Findings of Fact with the Village Clerk and he will do so tomorrow.

Upon a motion by Fred Engelfried, seconded by Leo Santowasso, the Board unanimously agreed to recess its regular meeting and enter into Public Hearing No. 1.

III. New Business

The following were sworn in: Alex Cameron, Jeremy Rust, Amanda Frasier, John Bizerik, Charles Showalter, Carolyn Bohan Webber and Bob Farren.

A. Public Hearing No. 1

The purpose of the public hearing is to receive testimony for a variance request from section 9.2a Tables of Dimensional Requirements for the property at 67 Deerwood Lane, further identified by Moore County PID # 00035903. This property is located within the R-10 (High Density Residential) Zoning District. Specifically, the applicant, Jeremy Rust and property owners, John Bizerik & Amanda Fraser are requesting a variance from the 30' Lakefront/Golf Course Setback from the Property Line to allow for the construction of a patio and outdoor fireplace in the rear yard.

Alex Cameron, Senior Planner read portions of the staff report into the record.

Jeremy Rust, applicant and John Bizerki and Amanda Frasier, property owners were present to answer any questions or address any concerns of the Board. Jeromy Rust presented a Power Point presentation.

Upon a motion by Fred Engelfried, seconded by Leo Santowasso, the Board unanimously agreed to close Public Hearing No. 1 and re-enter into the regular meeting.

After discussions, Fred Engelfried made a motion to reopen Public Hearing No. 1; Mike Marsh seconded the motion, which was unanimously approved.

Leo Santowasso made a motion to close Public Hearing No. 1 and re-enter the regular meeting; Fred Engelfried seconded the motion, which was unanimously approved.

Leo Santowasso made a motion that the variance be granted without any conditions; Mike Marsh seconded the motion with an amendment to limit the height of the chimney to seven (7') feet made by Fred Engelfried.

Poll the Board

<i>Leo Santowasso</i>	<i>Approve</i>
<i>David Kelley</i>	<i>Disapprove</i>
<i>Julia Latham</i>	<i>Disapprove</i>
<i>Fred Engelfried</i>	<i>Approve</i>
<i>Mike Marsh</i>	<i>Approve</i>

John Silverstein, BOA Attorney, stated that the motion passes but the variance is not granted because four affirmative votes are needed to approve a variance.

The vote was 3-2.

Leo Santowasso made a motion to approve the variance request without any conditions; Fred Engelfried seconded the motion.

Poll the Board

<i>Leo Santowasso</i>	<i>Approve</i>
<i>David Kelley</i>	<i>Disapprove</i>
<i>Julia Latham</i>	<i>Disapprove</i>
<i>Fred Engelfried</i>	<i>Approve</i>
<i>Mike Marsh</i>	<i>Approve</i>

Vice-Chair Julia Latham stated that the motion has passed but the variance is not accepted because we need four (4) positive votes to accept the variance. The vote was 3-2.

Vice-Chair Latham made a motion to approve the variance with the condition that there be no fireplace attached; David Kelley seconded the motion.

Vice-Chair Latham amended her motion that we approve the variance with the condition that the patio not include a fireplace and recognize a 20' setback from the property line; David Kelley seconded the motion.

Poll the Board

<i>Leo Santowasso</i>	<i>Yes</i>
<i>David Kelley</i>	<i>Yes</i>

<i>Julia Latham</i>	<i>Yes</i>
<i>Fred Engelfried</i>	<i>Yes</i>
<i>Mike Marsh</i>	<i>Yes</i>

Vice-Chair Latham stated that a motion has been made and seconded, and carried that the variance be approved with the patio recognizing a 20' setback and not including the fireplace. The vote was 5-0.

Vice-Chair Latham recessed the meeting for five (5) minutes.

Transcript for this request is available in the Planning Department.

B. Public Hearing No. 2

David Kelley made a motion to recess from the regular meeting and enter into Public Hearing No. II; Leo Santowasso seconded the motion, which was unanimously approved.

Mike Tatum, Tatum Builders and property owner was sworn in.

The purpose of the public hearing is to receive testimony for a variance request from section 9.2a Tables of Dimensional Requirements for the property at 4 Peachtree Lane, further identified by Moore County PID # 00032345. This property is located within the R-10 (High Density Residential) Zoning District. Specifically, the applicant and owner, Mike Tatum is requesting a variance from the 30' Lakefront/Golf Course Setback from the Property Line to a 15' setback to allow for the construction of a new single family home.

Alex Cameron, Senior Planner read portions of the staff report into the record.

Talmage Scarborough, Attorney for Mr. Tatum and Mike Tatum, property owner and applicant were present to answer any questions or address any concerns to the Board

Bob Farren was present and gave testimony concerning the adjacent golf course property and that the proposed variance would still provide more than adequate distance from the golf course property.

Ms. Carolyn Webber, adjacent property owner questioned what impact would the new construction have on her property.

David Kelley made a motion to close Public Hearing No. 2 and re-enter the regular meeting; Leo Santowasso seconded the motion, which was unanimously approved.

David Kelley made a motion to approve the variance with no conditions; Leo Santowasso seconded the motion.

Poll the Board

<i>Leo Santowasso</i>	<i>Yes</i>
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<i>David Kelley</i>	<i>Yes</i>
<i>Julia Latham</i>	<i>Yes</i>
<i>Fred Engelfried</i>	<i>Yes</i>
<i>Mike Marsh</i>	<i>Yes</i>

Vice-Chair Latham stated that a motion has been made and seconded, and carried that the variance be approved with no conditions. The vote was 5-0.

IV. Next Meeting Date

A. July 5, 2018

V. Adjournment

Leo Santowasso made a motion to adjourn the meeting, seconded by David Kelley. The Board unanimously agreed to adjourn the meeting at 7:13 p.m.